

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
EASTERN DIVISION
NO. 4:03-CR-14-H

UNITED STATES OF AMERICA,)
)
)
)
)
v.)
)
)
EMMANUEL JEROME GARDNER,)
)
)
Defendant.)
)

ORDER

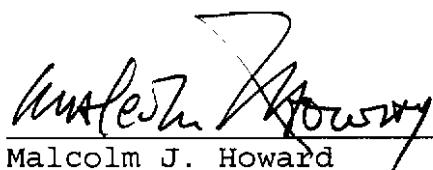
This matter is before the court on defendant's motion, brought pursuant to Rule 36 of the Federal Rules of Criminal Procedure, to correct a clerical error in the judgment.

Defendant argues that paragraph 16 of his Presentence Report (PSR) lists that defendant was convicted of robbery with a dangerous weapon. As explained previously to defendant and to his Unit Manager at the BOP facility in Bennettsville, South Carolina, defendant was not convicted of robbery with a dangerous weapon. Defendant actually pled guilty to the lesser offense of common law robbery, a Class G felony, and was sentenced to a term of 13-16 months' imprisonment. Attached to this order is a copy of the Judgment and Commitment Order from the Superior Court of Greene County, North Carolina.

While the presentence report incorrectly listed the offense as robbery with a dangerous weapon, the error did not in any way affect the sentencing guideline calculations or the court's judgment. The court therefore DENIES defendant's motion to modify the judgment made on the basis of the erroneous offense description.

However, review of this matter reveals that this matter may fall under the Standing Order Re: Motions for Post-conviction Relief Pursuant to United States v. Simmons, ___ F.3d ___ (4th Cir. Aug. 17, 2011) (en banc), EDNC 11-SO-3. Therefore, the Clerk is directed to serve a copy of this order on the Office of the Federal Public Defender for appointment of counsel for defendant Emmanuel Gardner in accordance with the provisions of the Standing Order.

This 9th day of November 2011.



Malcolm J. Howard
Senior United States District Judge

At Greenville, NC
#26

(check all that apply)

1. The defendant shall pay the costs.

2. The defendant shall pay a fine of \$ _____.

The Court recommends:

3. Substance Abuse Treatment Unit pursuant to G.S. 15A-1351(h). 4. Psychiatric and/or psychological counseling.

5. Work Release.

6. Payment as a condition of post release supervision, if applicable, or from work release earnings, if applicable, of the item and amounts set out below.

Fines	Costs	Restitution*	Reimbursement For Attorney Fee & Other	Total Amount Due
	\$116.00		\$425.00	\$541.00

*Name(s), address(es), amount(s) & social security number(s) of aggrieved party(ies) to receive restitution:

The Court further recommends:

The Court does not recommend:

1. Restitution as a condition of post release supervision or work release. 2. Work release.

AWARD OF FEE TO COUNSEL FOR DEFENDANT

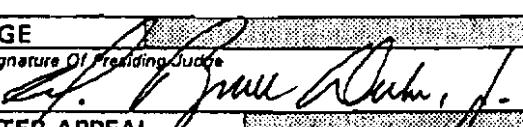
A hearing was held in open court in the presence of the defendant at which time a fee, including expenses, was awarded the defendant's appointed counsel or assigned public defender.

ORDER OF COMMITMENT/APPEAL ENTRIES

It is ORDERED that the Clerk deliver two certified copies of this Judgment and Commitment to the sheriff or other qualified officer and that the officer cause the defendant to be delivered with these copies to the custody of the agency named on the reverse to serve the sentence imposed or until the defendant shall have complied with the conditions of release pending appeal.

The defendant gives notice of appeal from the judgment of the Superior Court to the Appellate Division. Appeal entries and any conditions of post conviction release are set forth on form AOC-CR-350.

SIGNATURE OF JUDGE

Date	Name Of Presiding Judge (Type Or Print)	Signature Of Presiding Judge
04-12-1999	W. RUSSELL DUKE, JR.	

ORDER OF COMMITMENT AFTER APPEAL

Date Appeal Dismissed	Date Withdrawal Of Appeal Filed	Date Appellate Opinion Certified

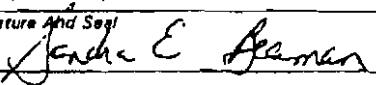
It is ORDERED that this Judgment be executed. It is FURTHER ORDERED that the sheriff arrest the defendant, if necessary, and recommit the defendant to the custody of the official named in this Judgment and furnish that official two certified copies of this Judgment and Commitment as authority for the commitment and detention of the defendant.

Date	Signature Of Clerk	<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk of Superior Court

CERTIFICATION

I certify that this Judgment and Commitment with the attachment marked below is a true and complete copy of the original which is on file in this case.

Appeal Entries (AOC-CR-350).
 Felony Judgment Findings Of Aggravating And Mitigating Factors (AOC-CR-605).
 Judicial Findings As To Forfeiture Of Licensing Privileges (AOC-CR-317).
 Commitment Information Statement (DC-600).

Date	Signature And Seal	<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Superior Clerk of Court
4-13-99		<input checked="" type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Superior Clerk of Court